and demands, not by analogy, but in obedience to them. See also upon this point, *Ferson v. Sanger,* 8 Fed. Cases, 4752; *Foley v. Hill,* 19 Eng. Ch., 399; affirmed in the House of Lords, 2 H. L. Cas., 28. This language might be well otherwise worded to the effect that the granting of legal relief, whether in a Court of Law or of Equity, must be done according to the rules applicable to the nature of the relief sought.

In the case of *Galway v. the Metropolitan Elevated Railway Co.,* 128 N. Y., 132, at page 146, Chief Justice Ruger says, "Inasmuch as the equitable remedy depends, among other things, upon the existence of a legal cause of action, it follows that those facts which will bar the legal action will also afford an answer to the equitable remedy, and that so long as a legal remedy exists an Equity Court is open to aid in the enforcement of the legal claim." All the justices concurred in this opinion.

We conclude that the doctrine of laches does not apply to those cases wherein relief of a legal nature is sought, such relief being barred only by the statute of limitations, and we find ourselves in complete agreement with Chief Justice Cullen, in his dissenting opinion concurred in by Vann and Willard Bartlett, J. J.

EFFECT IN A BURGLARY INSURANCE POLICY OF STIPULATIONS AGAINST LOSS WHERE THERE ARE NO VISIBLE MARKS OF FORCE OR VIOLENCE ON THE PREMISES.

In the case of *Rosenthal v. American Bonding Co.,* 100 N. E., 716 (N. Y.), the plaintiff took out a policy of insurance with the defendant company, whereby the latter agreed to indemnify him against loss occasioned by burglary, where the burglar entering or leaving the premises had used force or violence, it being further conditioned that there must be visible marks of such force or violence on the premises. Thieves gained entrance through an unlocked door, assaulted the clerks of the plaintiff, robbed the store, and left the premises by the same means through which they had effected their entry. Recovery was denied on the grounds that there was no visible marks of force on the premises.

It would seem that where a contract is couched in such unequivocal terms as is that which is under consideration in the principal case, there could be no room for doubt as to its import. That such is not the fact, however, readily appears from an examination of the cases, and from the fact that the decision in the

principal case reverses with two dissenting votes the holding of the lower Court, which has been cited for the past three years as authority to the contrary; 38 *Cyc.*, 276. It seems to be conceded in the principal case that there was such a forcible entering as to bring the crime within the definition of burglary. The case is made to turn upon the particular kind of burglary committed, the Court being led to view the case in this light by reason of the phrase in the policy limiting liability to burglary of which there is some visible mark of violence on the premises. Thus the case resolves itself into a consideration of the intention of the parties in inserting the words of limitation into the contract.

Practically all of the cases which have any bearing upon the point have been decided contrary to the principal case. This may be accounted for in two ways: (1) the reluctance of Courts generally to decide in favor of one who has dictated the terms of a contract when the words that he has employed are susceptible of two interpretations; *Schunmaker v. Great Eastern C. & I. Co.*, 197 N. Y., 58: (2) the tendency to regard similar phrases merely as rules of evidence to protect the insurer against fraud, and not as conditions limiting liability where proof is absolute and conclusive; *Mutual Accident Association v. Barry*, 131 U. S., 100. The reason and justice of the first point indicated are too obvious to require special discussion. The second is not so apparent.

From the earliest days of accident insurance there have been stipulations that the insurer shall not be liable unless there be outward and visible marks of the injury on the body, "the body itself in case of death not being deemed such mark." And yet, in practically every case, recovery has been allowed where death has occurred from accident, whether there was any visible mark at all, or whether the only visible mark was a change in the complexion of the corpse, due proof that the injury did result from accident being substantiated by other evidence; *Horsfall v. Pacific Mutual Life Insurance Co.*, 32 Wash., 132. This case is representative of the line of authority followed by the lower Court in deciding the principal case. And while the stipulations of the policies in those cases are analogous to those under consideration here, the Court refuses to apply them.

Is it reasonable then, to hold the insured to the literal meaning of the words employed? In spite of the definiteness with which it is stated that there shall be no liability unless there be visible marks of external violence, is it not fair to assume that nothing

more limiting on the insurer's liability was intended than past judicial interpretation has given to the words? Although the opinion discredits the contention that there could have been any uncertainty as to the intention of the parties in employing the terms used, it is submitted that when Courts for the past fifty years have given express words a particular meaning, those same words employed under similar circumstances in another case should be given the same meaning.

Certainly the primary object in taking out a policy of this sort is to secure to the insured protection against theft. If it is against a particular kind of theft, viz., that in which the burglar favors the insured by leaving the mark of his jimmy on the window sill or door jam, the Court is right in its holding. But it is submitted that were such the real nature of the policy, it would have but little *raison d'etre,* for what manner of man in full possession of his reasoning faculties would protect himself with such a policy at a time when burglary as a fine art has displaced the old time blunderbuss methods of operation? Such a policy offers immunity only against the clumsy amateur burglar, unskilled in the ways of the craft, against whom protection is seldom needed in a well ordered community, while as against his more skillful competitor, the cracksman who leaves behind him no mark of force or violence, the policyholder is without protection. Surely it could never have been the intention of the insured to enter into such an agreement.

Looking at the matter from the insurer's point of view we are forced to the same conclusion. The primary object of a corporation in conducting such a business is to sell as many policies as possible in order to realize on the premiums an amount above the losses sustained by reason of the indemnities. Offering such a policy as the Court would have us believe this to be, just how many policies would a company be able to dispose of?

Interpreting the contract in the light of former decisions, and with strict regard for the considerations which must have influenced the minds of the parties contracting, it is submitted that the words as used in the policy were intended only for protection against fraud in cases where other evidence of the breaking and entering was lacking. They were not intended to limit recovery to a particular kind of burglary, and the Court in deciding the principal case takes a most unique position which it is rather hard to justify or to reconcile with the law as it stands to-day.